

Updated on August 23, 2012



### **Frequently Asked Questions**

*Originally prepared for the Informational Meeting for School Leaders on 5/16/11*

This FAQ document was prepared in response to the many questions the Indiana Department of Education (IDOE) has received regarding this year's new legislation. We are entering a new era in educating students. In fact, much of past practice is gone (or reset), so it is incumbent upon all of us to be thoughtful and deliberate in establishing a new precedent for future school leaders. The hard work we put in now will have strong implications for students for years to come.

There will certainly be more questions in the weeks and months ahead. **This FAQ document will be continually updated as we compile more questions from school leaders and educators.\*** School corporations can expect additional guidance and support as more details are solidified.

Let's take advantage of this real opportunity – to not only clean up outdated or bad policies and contract language – but to launch our schools and our state into a new world where the needs of students are truly prioritized above all else!

**The following information is for informational purposes only. Neither the IDOE nor any IDOE employee can act as your attorney or offer legal advice. It is recommended that you consult with your attorney prior to making any decisions based on the information contained in this document.**

#### **Collective bargaining/contracts (P.L. 48, 2011; IC 20-29-6)**

1. What if my contract was settled before July 1, 2011? Does the deficit financing provision apply?

**If your contract was/is settled after April 21, 2011, the contract cannot include language regarding teacher evaluations and cannot exceed the length of a budget biennium. See #9 re: deficit financing.**

2. What if I have a salary reopener in my contract?

**If the salary provision of the contract (or any provision of the contract) is reopened and the contract is resettled at any time after July 1, 2011, the contract must become compliant with the new law.**

3. What if my contract was not settled by July 1, 2011?

**Contracts settled after July 1, 2011, should comply with the current laws, including but not limited to those governing collective bargaining (IC 20-29), increases in teacher**

\* Denotes answers that have been revised since the last version

**compensation (IC 20-28-9), and evaluation of certificated employees (IC 20-28-11.5).**

4. Can teachers paid with stimulus funding be hired on supplemental contracts?

**Yes.**

5. Who can be considered for a supplemental contract?

**\*Indiana Code §20-28-6-7 states that a supplemental contract should be used for a “teacher” who (1) holds a substitute teacher’s license and (2) provides instruction in a joint summer program (IC 20-30-7-5).**

**This contract shall be used when a teacher provides professional service in evening or summer school employment EXCEPT when a teacher or other individual is employed to supervise or conduct NONCREDIT COURSES or ACTIVITIES.**

6. What is the length of a contract for settlements that occur before July 1, 2011 and do not include prohibited language?

**The length of the contract as agreed upon by both parties, but a contract settled after April 21, 2011 cannot extend beyond June 30, 2013.**

7. Can school administrators meet with teachers to discuss any issue and not be accused of bypassing the union?

**Nothing prohibits administrators from having information gathering meetings. Mandatory discussion items are included in SEA 575, as are provisions related to numbers of union teachers required to be on any committee other than the bargaining committee.**

8. Can a collective bargaining agreement include grievance language?

**There is actually a conflict in statute. Section 5 says a contract may contain a grievance procedure, but 4.5(a)(5) says a contract cannot contain anything not expressly listed in section 4.**

**One thing is for certain – a contract cannot contain language regarding binding arbitration.**

9. Is advisory arbitration permissible?

**Advisory arbitration should not be the final step in a grievance process. If it were the final step (e.g., the school board does not have final say on the matter following advisory arbitration), it would function as binding arbitration, which is not permitted by statute.**

10. How does cash balance impact contract settlements? Can cash balance be used for settlement? Can the mediator and factfinder consider cash balance when determining deficit financing?

\* Denotes answers that have been revised since the last version

Cash balance can be used up to and including mediation, but not in fact-finding. Once it gets to fact finding, the fact-finder will look at general fund revenue, which would consist of IDOE's certification of general fund revenue and, if applicable, the Department of Local Government Finance's certification of any general fund operating referendum passed under IC 20-46-1.

11. What happens to old IEERB rulings?

**Past IEERB rulings apply unless they conflict with IC 20-29. IEERB rulings regarding the provisions of the discussion process still intact under IC 20-29-6-7 remain in effect.**

***Note: IEERB and court rulings regarding the appointment of bargaining unit members to school/school corporation committees are superseded by the provision in IC 20-29-5-7 limiting the right of the exclusive representative to appoint members to committees only in proportion to the exclusive representative's membership proportion of the number of employees eligible to be in the bargaining unit (see #24).***

12. Will IDOE review contracts for school districts?

**\*The IDOE will continue to update its "CBA Guidance" document and other information located at <http://doe.in.gov/improvement/legal/collective-bargaining>. Please note that no IDOE attorney can act as an attorney for either school districts or exclusive representatives. Any guidance supplied by the IDOE is for informational purposes only.**

13. Can cash balance and rainy day funds be used in the last best offer?

**No. Only general fund revenue is considered in the last best offer.**

14. How do districts set days and hours?

**Hours are now discussable only. Days are set by the administration. Language regarding hours or days should not appear in a collective bargaining agreement entered into on or after July 1, 2011.**

15. How should districts enter days and hours on the standard teachers contract?

**\*Although days/hours are no longer bargainable, they are still pertinent to the "Regular Teacher Contract Form." Days are set by the corporation. After discussion, the hours the teacher is expected to work should be entered into the appropriate blank on the Regular Teacher Contract form.**

16. How do unfunded liabilities, such as early retirement buy-outs that were not fully funded, impact the deficit financing provision?

**Any unfunded liability would be considered as part of the negotiation.**

17. Can the factfinder calculate the last best offer line by line or is it the total package?

**Total package.**

18. Can the factfinder mediate?

\* Denotes answers that have been revised since the last version

**Not formally. The factfinder may facilitate informal conversations between the parties.**

19. What happens if the parties agree to a contract during the factfinding process?

**The law specifies that factfinding must culminate in the factfinder imposing contract terms on the parties. If the parties agree to contract terms during factfinding, they could submit identical last best offers to the factfinder. As long as those last best offers do not contain any illegal provisions or place the school corporation into deficit financing, the factfinder may accept the agreed terms.**

20. Can binding fact-finding be appealed to court?

**Yes, but IC 20-29-6-18 provides that the first appeal is to IEERB.**

21. Does the law prohibit informal bargaining before the bargaining timeline?

**No, as long as it happens before August 1 and is conducted with the authorized agent(s) of the exclusive representative.**

22. Will schools or associations be fined if they have not reached an agreement by October 1st?

**There is no legal basis for assessing fines against parties that fail to reach an agreement by October 1st. However, once impasse is declared by operation of law on September 30th, IEERB will order the parties to participate in mediation and, if necessary, factfinding. The parties will split the cost of mediation (\$800/day) and factfinding (\$1,200/day + \$500/day for a financial consultant), along with any incidental costs as ordered by IEERB.**

23. What happens to old contract language once the new contract is ratified?

**It's gone, except for language relating to salary and wage-related fringe benefits.**

24. What happens to the accumulation of leave days and the daily reimbursement?

**This is locally bargained.**

25. Did any legislation affect School Improvement Plans? Are School Improvement Plans required?

**Yes. Specifically, IC 20-29-5-7 states the percentage of teacher positions the exclusive representative may appoint to serve on a statutory or locally created school wide committee may not exceed the percentage of teachers in the school who are members of the exclusive representative. This includes School Improvement Plan committees.**

**School Improvement Plans are required under IC 20-31-5-1 and 511 IAC 6.2-3-1. Submission of a School Improvement Plan is one of the eleven legal standards for accreditation.**

26. If I do not settle my contract, does that mean I cannot give raises for 2 years?

**Contracts settled after July 1, 2011, can include raises, but any raise must comply with the new current law regarding increases in teacher compensation (IC 20-28-9-1).**

27. Do you know if IC 20-35-5-11 is still in effect? This law also keeps school corporations from being able to place the best teachers in open positions. As school corporations move away from expensive special education cooperatives and vocational schools, this law is a major issue.

**Yes, IC 20-35-5-11 is still in effect. But under IC 20-35-5-11, teachers who are RIFed by a special education cooperative have recall rights within all of the cooperative's member school corporations. As a result, the pool of available recall opportunities is broader for a cooperative teacher than a teacher who is employed by a single school corporation.**

28. How will pay for unused sick days be negotiated now?

**Salary and wage related fringe benefits remain bargainable at the local level.**

29. Will current contracts, including those that have been extended beyond a biennium, automatically expire at the end of the new biennium? And will that be June 30 or December 31 of 2013?

**If the contract was settled between April 21, 2011 and July 1, 2011, the contract cannot exceed the length of the budget biennium. The end of the new biennium is June 30, 2013.**

30. Will current contracts, including those that have been extended through the new biennium, take precedence over the latest legislation on teacher evaluation, compensation, salary determination, and collective bargaining through the end of the new biennium? Or will new legislation trump current contracts, even if extended?

**See #1. Although the new legislation cannot trump current contracts, corporations should note that, under IC 20-28-11.5, "a school corporation must submit its staff performance evaluation plan to the department for approval in order to qualify for any grant funding related to this chapter." For many, if not most, corporations, this grant funding may represent the only new dollars available. Evaluation is also a legal standard for accreditation.**

31. Is performance pay outside the revenue that can be considered by the factfinder?

**Only general fund revenue is considered by the factfinder.**

32. When does the new biennium begin and end?

**The new biennium begins July 1, 2011 and ends June 30, 2013. Note that the biennium consists of two state fiscal years: July 1, 2011 to June 30, 2012 and July 1, 2012 to June 30, 2013.**

\* Denotes answers that have been revised since the last version

33. Can a district grant a bonus to employees outside of the collective bargaining agreement?  
Can this be authorized by board policy?

**Not if the bonus is a salary or wage-related fringe benefit.**

34. How will the annual health insurance renewal impact collective bargaining since some of the renewal dates are outside the time when bargaining occurs? How do insurance premiums affect deficit financing?

**The renewal dates may need to be made to conform to the collective bargaining timeline. The prohibition against deficit financing applies to the cost of the insurance programs.**

35. How do I know what language can and cannot be included in my new contract?

**Unless a subject is expressly listed in IC 20-29-6-4, it may not be included in the contract.**

36. What if our past practice was to include something not listed in section 4?

**Where there is a conflict between past practices and the new law, the new law governs. See #36.**

37. What about contract terms that are inherent in a written agreement but not permitted under section 4?

**Only those provisions that directly relate to the subjects of bargaining listed in section 4 and those necessary to create an enforceable contract (i.e., contract term, definitions, recognition) may be included in the agreement.**

38. We are one of the school corporations that signed contracts after July 1, 2011 and are not in compliance with the new laws. What will happen? How can we comply when so many interpretations still haven't been made?

**\*IDOE continues to update its “CBA Guidance” and “Collective Bargaining FAQ” documents housed on its collective bargaining page: <http://doe.in.gov/improvement/legal/collective-bargaining>. However, if a corporation is already aware that the contract is not in compliance, a good starting point would be to remove those provisions that clearly do not comply with the law.**

39. Are “sick banks” mandatory subjects of bargaining?

**Only insofar as they directly relate to “paid time off” or “sickness” fringe benefits. See # 27.**

40. What do we have to do to remove language regarding prohibited subjects of bargaining from our new contract? We have always had language regarding hours in our contracts, so how do we move

forward without that language in the agreement?

**Language regarding prohibited subjects of bargaining cannot be included in a new agreement. Corporations must discuss the required subjects of discussion (listed in IC 20-29-6-7 <http://www.in.gov/legislative/ic/code/title20/ar29/ch6.html>) with the exclusive representative. It is unnecessary to discuss other subjects simply because they were included in a prior agreement. If a pre-July 1, 2011, contract included language about hours, that language should not appear in any new agreement between the parties, but hours should now be discussed as required by IC 20-29-6-7.**

41. Does the obligation to bargain over health benefits extend to such subjects as the corporation's selection of a particular health insurance carrier?

**Not necessarily. Subjects like employee contribution amounts and the type of coverage plan are mandatory subjects of bargaining because they directly relate to the health insurance benefits actually received by the employees. If language does not vitally affect the benefit (e.g., is more administrative in nature), it is likely outside of the scope of Section 4 subjects of bargaining.**

42. If a contract requires the corporation to continue to pay health insurance premiums for an employee during the employee's unpaid leave, does that unpaid leave then become a mandatory subject of bargaining?

**No. The payment of health benefits during the unpaid leave would be bargained under the umbrella of health benefits. Unpaid leave is a prohibited subject of bargaining because it is not expressly listed in IC 20-29-6-4.**

43. Are employee expense reimbursement provisions for things like classroom supplies mandatory subjects of bargaining?

**No, because the employee receives no wage, salary, or fringe benefit from a reimbursement. The reimbursement merely puts the employee back into the position the employee was in before the employee incurred the work-related expense.**

44. Must a discussion committee comply with the proportionality provisions in IC 20-29-5-7?

**Yes. The proportionality rule applies to any statutory or locally created district wide or school wide committee, except for the exclusive representative's bargaining team.**

45. Do my administrative contracts have to remain on the Regular Teacher contract form?

**\*Yes. IC 20-28-8-2 states**

**School principal's and administrative assistant's contracts; conditions**

**Sec. 2. A contract of employment shall be entered into between the governing body of the school corporation and a principal or assistant**

principal subject to the following conditions:

(1) The basic contract must be the regular teacher's contract as prescribed by the state superintendent.

(2) The term of the initial contract must be the equivalent of at least two (2) school years.

(3) The contract may be altered, modified, or rescinded in favor of a new contract at any time by mutual consent of the governing body of the school corporation and the principal or assistant principal, if the contract, when reduced to writing, is consistent with this chapter.

Furthermore, IC 20-28-8-6 states:

**Superintendent contracts**

**Sec. 6. A contract entered into by a governing body and its superintendent is subject to the following conditions:**

(1) The basic contract must be in the form of the regular teacher's contract.

(2) The contract must be for a term of at least thirty-six (36) months.

(3) The contract may be altered or rescinded for a new one at any time by mutual consent of the governing body and the superintendent. The consent of both parties must be in writing and must be expressed in a manner consistent with this section and sections 7 through 8 of this chapter.

(4) The rights of a superintendent as a teacher under any other law are not affected by the contract.

46. Do I have to post administrative contracts/ or my CBA anywhere?

**\*Yes. PL 148-2012 provides that the governing body shall post the provisions of an employment contract with its superintendent on the school corporation's website. This should include the actual contract and any addendums attached to the contract. See IC 20-26-5-4.3.**

**PL 148-2012 also provides that the superintendent shall post the provisions of an employment contract that the school corporation enters into with a certificated employee on the school corporation's website. See IC 20-26-5-4.7.**

**Finally, PL 148-2012 states that within 14 business days after the parties have reached an agreement, the school employer shall post the CBA on the school employer's website. See IC 20-29-6-19.**

**It's also important to note that once ratified, a CBA must be submitted to IEERB.**

**Teacher evaluations/compensation plans (IC 20-28-11.5 and IC 20-28-9)**

47. I am negotiating a CBA for the 2012-13 school year. Can I give my teachers a raise during this one year contract?

\* Denotes answers that have been revised since the last version



**\*The law permits salary increases for teachers in 2012-13, provided the increases comply with Ind. Code §20-28-9 and do not put the school corporation into deficit financing. School corporations must begin using the new evaluation program during the 2012-13 school year, however the summative evaluation results will not be complete until the fall of 2013 for many teachers due to the IDOE's timeline for releasing student growth data. These evaluations will affect compensation for teachers for the 2013-14 school year because, "[a] teacher rated ineffective or improvement necessary under IC 20-28-11.5 may not receive any raise or increment for the following year if the teacher's employment contract is continued." See Ind. Code § 20-28-9-1(c). Therefore, teachers who receive an "ineffective" or "improvement necessary" designation on an evaluation for the 2012-13 school year will be prohibited from receiving a raise or increment for the 2013-14 school year. This provision does not affect the 2012-13 school year, assuming the school corporation did not conduct evaluations under Ind. Code §20-28-11.5 for the 2011-12 school year.**

**Schools negotiating a one-year CBA for the 2012-13 school year have at least two options available for providing increases. These compensation systems are determined through bargaining. First is the "retroactive performance pay" option. School corporations can carry over their 2011-12 salaries for the 2012-13 school year. The parties will then bargain a compensation model pursuant to Ind. Code §20-28-9. Once student assessment data is returned in the summer of 2013 it will be possible to rate teachers as effective/highly effective/etc. under Ind. Code §20-28-11.5 for their '12-'13 performance. If the parties agree to a retroactive salary increase (or a one-time bonus/stipend) based upon the summative performance evaluations, the retroactive pay increase could be paid next summer for the '12-'13 school year. Pay for the '13-'14 school year could also be adjusted at that time if the parties desire.**

**The second option would be for parties to utilize at least two of the four compensation factors listed in Ind. Code §20-28-9-1(b) to determine increases for the 2012-13 school year, but leaving out performance evaluation results. The summative evaluation results will then be incorporated for determining raises for the 2013-14 school year. Parties must remember that experience and additional degrees can only account for up to 33% of the calculation used to determine a teacher's increase or increment.**

48. I am negotiating a CBA for the 2012-13 school year. What do I pay my teachers, while the new CBA is being negotiated?

**\*IC 20-29-6-16 provides that until a new CBA is ratified, the parties shall continue the terms of the current CBA that is in effect. The only parts of the CBA that must continue are those items listed in IC 20-29-6-4. Upon the expiration of the current CBA, the school employer shall continue under the terms of the current CBA with no increase or increment in salary, wages, or benefits for any bargaining unit employee**

\* Denotes answers that have been revised since the last version

until a new CBA is executed, unless continuation of the current/expired CBA places a school corporation in deficit financing,

49. Does legislation state that no teacher will make less than he/she earned in 2010-11?

**The statute says that a salary cannot be decreased solely because of this legislation. Specifically, IC 20-28-9-1 states that the legislation “may not be construed to require or allow a school corporation to decrease the salary of any teacher below the salary the teacher was earning on or before July 1, 2012, if that decrease would be made solely to conform to the new salary scale.”**

50. The new law seems to contradict itself. One part says you can't make less next year than this year. Another part says that you can't have deficit spending. We are a small school with declining enrollment. Could our teachers be paid less this next year?

**The law says that the new statutes regarding teacher compensation “may not be construed to require or allow a school corporation to decrease the salary of any teacher below the salary the teacher was earning on or before July 1, 2012, if that decrease would be made solely to conform to the new salary scale.” IC 20-28-9-1(i) (emphasis added). If there are other reasons for reducing a teacher’s salary other than to simply fit the teacher into the new compensation system (e.g., if budget cuts across the board are necessary to avoid deficit financing), the law does not appear to prohibit such adjustments. As always, salary and wages are bargained at the local level.**

51. How is leadership defined when calculating performance pay?

**This is a local decision, but IDOE provided some guidance on this question in its model salary schedule, which is available here: [www.doe.in.gov/puttingstudentsfirst/](http://www.doe.in.gov/puttingstudentsfirst/). Examples of instructional leadership responsibilities include the following: Teacher evaluator; Mentor teacher; Master teachers [System for Teacher and Student Advancement (TAP)]; Teacher assistance and review team member [Peer Assistance and Teacher Evaluation Review System (PAR)]; Curriculum leader (math; language arts); and Instructional leader (remediation; dual credit).**

52. How are wages determined for extra-curricular salary schedules?

**Wages for extra-curricular duties are locally bargained.**

53. What constitutes base pay in the current year and in the following year?

**Base pay is locally bargained, though it cannot be decreased from what the teacher was earning on or before July 1, 2012, if the decrease is made solely to conform to the new salary scale language. See IC 20-28-9-1.**

54. What is the process for removing an established teacher for performance?

**A contract with an established teacher may be cancelled if the teacher receives two consecutive ineffective ratings or if the teacher receives an ineffective or improvement**

necessary rating in three (3) years of any five (5) year period. The relevant procedures are listed in IC 20-28-7.5.

55. Does performance pay become a part of the base salary?

**The structure of salary increases or increments in the IDOE model includes the partial base salary increase approach. In this method, overall compensation and base rate compensation are displayed. The framework utilized in the IDOE model includes salary increases earned through the experience factor in increases in base rate compensation. Salary increases earned through the effectiveness factor, as well as through fixed amount allocations, are included in the overall compensation.**

56. Are supplemental contracts linked to the salary schedule?

**Not necessarily; the superintendent may, but it not required to, base the salary for a supplemental contract on the regular salary scale. IC 20-28-6-7 expressly allows the superintendent to set the salary for supplemental contracts.**

57. How is teacher defined? Does the definition include psychologists, nurses, and other classes that were previously classified as a teacher? If they are not included how are wages and benefits determined?

**IC 20-18-2-22 defines teacher as “a professional person whose position in a school corporation requires certain educational preparation and licensing and whose primary responsibility is the instruction of students.” The term includes: (1) a superintendent, (2) a principal, (3) a teacher, and (4) a librarian. Wages and benefits are locally bargained.**

58. Can psychologists, nurses, and other classes that were previously defined as teachers still be included in the bargaining unit?

**The definition of teacher in IC 20-18-2-22 does not affect the categories of school employees that may be included in the bargaining unit. IC 20-29-2-13 defines a “school employee” as “a full-time certificated person in the employment of the school employer.” A school employee, therefore, includes “teachers” as defined by IC 20-18-2-22, but need not be limited to only teachers. IC 20-29-5-1(a) prohibits bargaining units from including both certificated and non-certificated employees, but that limitation does not prevent counselors, speech pathologists, or psychologists from remaining in the bargaining unit.**

59. Should counselors, speech pathologists, psychologists, nurses, or others who are no longer defined as teachers be treated as teachers for purposes of evaluation? What about the compensation plan?

**For purposes of the current laws regarding increases in teacher compensation (IC 20-28-9), the definition of a “teacher” does not appear to include speech language pathologists, school counselors, school psychologists, school nurses, etc. Theoretically, it appears legally permissible to have such educators on a separate compensation track from the individuals defined as “teachers” in IC 20-18-2-22.**

**For purposes of evaluations, the law requires each school corporation to “develop a plan for annual performance evaluations for each certificated employee (as defined in IC 20-29-2-4). The definition of “certificated employee” for annual performance evaluation purposes means “a person: (1) whose contract with the school corporation requires that the person hold a license or permit from the division of professional standards of the department under IC 20-28; or (2) who is employed as a teacher by a charter school established under IC 20-24.”**

**This definition of “certificated employee” appears to cover educators such as counselors, speech pathologists, psychologists, nurses, etc. In other words, it appears that certificated professionals who do not fall under the definition of teacher (as defined in IC 20-18-2-22) should be evaluated annually in accordance with IC 20-28-11.5, but increases in their compensation need not comply with IC 20-28-9.**

**That said, nothing in the law prevents a corporation from including all certificated employees in the compensation system designed for teachers. Decisions regarding this and other specific compensation issues should be decided through the bargaining process at the local level.**

60. Should the classes of employees who are no longer defined as teachers still sign the Regular Teacher Contract form?

**The law requires teachers -- as defined in IC 20-18-2-22 (teacher, superintendent, principal, and librarian) -- to sign the Regular Teacher Contract form. Administrator contracts are prescribed by IC 20-28-8. Under the current definition of “teacher” for contract purposes, it appears that newly hired non-teachers need not be employed on the Regular Teacher Contract form. However, corporations should consult with their attorneys before discontinuing past practices with their non-teachers who have been employed on a Regular Teacher Contract in previous years.**

61. What are the labor rights of non-certificated individuals working at the school?

**\*If an individual working at the school is not an employee of the school, that person likely is under the protection of the NLRA (i.e., a food service employee of ABC, Inc.) If the person is employed by a school, whether a union is recognized is a local decision. If the union is recognized, the rights of the individual are limited to any rights contained within the CBA itself, as it pertains to unfair labor practices.**

62. When do teachers become “established”?

**Teachers who were employed at the end of the 2010-2011 school year and who returned at the start of the 2011-2012 school year fall within the established teacher category.**

63. Can districts grant across the board raises?

\* Denotes answers that have been revised since the last version

**No. Raises cannot be given to teachers who are not evaluated effective or highly effective after July 1, 2012. Question #3 addresses raises granted prior to July 1, 2012.**

64. If we offer a new retirement incentive for employees that is not in our current collective bargaining agreement, would IDOE consider that a reopener that would subject the contract to the new laws?

**Salaries and wages are mandatory subjects of bargaining that should be included in each local collective bargaining agreement. Retirement incentives fall under the umbrella of salaries and wages, so a new retirement incentive would be a modification to the current contract that, if resettled into a new agreement, would subject the new agreement to the current laws (i.g., SEA 575).**

65. Are there any plans to reduce the current state evaluation model to a less cumbersome model?

**Please visit <http://www.riseindiana.org/> for information regarding the RISE evaluation model.**

66. If I do not have an approved and implemented evaluation tool, will I be unable to develop a salary/compensation schedule?

**An evaluation tool only needs to be approved by the IDOE if the school corporation wants to apply for grant funding (for which \$6 million has been allocated in 2011-12 and \$9 million has been allocated in 2012-13). The connection between the evaluation tool and the compensation schedule (i.e. in terms of weighting) will be locally determined.**

67. Will the published information simply state the number of teachers in each of the performance categories by school or will it be more specific listing the number of teachers, by department, in each school?

**The published information shall be aggregated. Specifically, IC 20-28-11.5 states, "the department shall report the results of staff performance evaluations to the state board, and to the public via the department's Internet web site, for (1) the aggregate of certificated employees of each school and school corporation; and (2) the aggregate of graduates of each teacher preparation program in Indiana."**

**The IDOE will follow any guidance issued by the USDOE regarding privacy concerns and will not identify teachers specifically or identify categories of teachers in such a manner that anyone would be able to determine the evaluation category of a specific teacher.**

68. Does the performance pay provision in SB 1 override teacher contracts that extend past July 1, 2012? For example, a school corporation recently approved a four-year contract (until July 1, 2015) that spells out how teachers will be evaluated and raises granted ... But the current language in the performance pay section of SB 1 says this: "This subsection takes effect July 1, 2012, or upon the expiration of a contract in existence on July 1, 2011, whichever is earlier, and governs salary increases for a teacher employed by a school corporation on or after the date this subsection takes

effect.”

**See #29.**

69. Will IDOE approve all teacher evaluation instruments?

**An evaluation tool only needs to be approved by the IDOE if the school corporation wants to apply for grant funding (for which \$6 million has been allocated in 2011-12 and \$9 million has been allocated in 2012-13).**

70. When will the performance grant funds be distributed?

**Details concerning performance pay grants and the grant application are now available. Please see the following link for more details: [www.doe.in.gov/puttingstudentsfirst/documents/performance\\_grant\\_application.pdf](http://www.doe.in.gov/puttingstudentsfirst/documents/performance_grant_application.pdf).**

71. Is the combination of factors used to determine a salary increase a mandatory subject of collective bargaining?

**Yes, subject to the 33% cap on the amount of salary increases that may be attributable to seniority and additional content area degrees or credit hours earned; and no single factor can equal 100%**

72. Is the weight of the factors used to determine a salary increase a mandatory subject of collective bargaining?

**Yes.**

73. Is it true that corporations are required to have at least 75% of teachers vote to approve the evaluation tool?

**The Governor recently signed into law House Enrolled Act 1376. Among other things, the act amended Ind. Code § 20-28-11.5-8, which specifies when corporations must provide an opportunity for teachers to vote on certain types of teacher evaluation plans. The law now states that a vote is only necessary if (1) a corporation develops its own unique plan or substantially modifies the Department’s model plan (RISE) or any other model plan approved by the Department, and (2) the Department requests that the corporation submit its new or substantially modified plan to the Department so the Department can determine whether such plan complies with I.C. § 20-28-11.5.**

**If a corporation develops its own plan or substantially modifies one of the approved plans and the Department requests a copy of such plan for a compliance review, the Department’s request will (1) specify that it is a request made pursuant to I.C. § 20-28-11.5-8(c), (2) be in writing on the Department’s letterhead, and (3) contain the Superintendent of Public Instruction’s signature. If any communication from the Department lacks one of these elements, it should not be considered a “request” for an evaluation plan under I.C. § 20-28-11.5-8(c).**

**Please note that a vote under I.C. § 20-28-11.5-8 relates only to the submission of an evaluation plan for a compliance review. Nothing in I.C. § 20-28-11.5-8 affects a corporation's ability to implement an evaluation plan. Also, nothing in the new law affects I.C. § 20-29-6-7(4), which requires corporations to discuss "evaluation" with the exclusive representative of certificated employees.**

74. How do advanced degrees affect performance pay?

**A teacher who finishes an advanced degree at any time can earn credit for that degree in his/her raise. The specific weighting of an additional degree in the raise computation is contingent upon what is bargained at the local level, but advanced degrees (along with seniority) can be part of the 33%.**

**IC 20-28-9-1 also includes a provision that will allow a teacher *currently enrolled* in a master's program to receive a pay increase under his/her district's *current salary schedule* once the degree is completed. Specifically, "compensation attributable to additional degrees for which a teacher has started coursework before July 1, 2011, and completed course work before September 2, 2014, shall also continue."**

75. How do we evaluate/pay educators teaching in grades/subjects that are not tested by ISTEP+?

**Please visit <http://www.doe.in.gov/improvement/educator-effectiveness/evaluations> for more information regarding evaluations and their role in teacher compensation.**

76. Is due process for teachers eliminated?

**No. The new legislation does not eliminate due process for teachers – it aligns teacher due process with current principal due process and makes it more focused on teacher performance. Teachers facing dismissal, for a reason other than RIF, are given the right to a private conference with the local superintendent and a private conference with the governing body. Teachers may have representation with them at the conferences.**

77. Do a certain percentage of teachers need to be rated in each of the four categories (i.e. highly effective, effective, improvement necessary, ineffective)? I've heard that 25% of teachers need to be highly effective, 25% effective, etc.

**No. There is no required distribution. However, it is important to note that teacher evaluation runs parallel with school accountability. For example, an "A" school that has 100% of its teachers rated highly effective or effective seems plausible. However, an "F" school with the same results is far less credible.**

78. What is an inverse salary schedule? Is it permissible under the new law?

**Traditional salary schedules work from the bottom up, where new teachers earn a particular starting salary and then work their way up the pay scale from that amount based on experience and advanced degrees. An inverse salary schedule works the**

opposite way. It provides a certain maximum salary from which teachers receive deductions. For example, a new teacher listed in an inverse salary schedule might receive a salary that is 40% of the maximum salary, a second year teacher 42%, etc.

Inverse salary schedules cannot be used to avoid the provisions of IC 20-28-9 governing salary increases. IDOE considers an employee to have received a salary increase under IC 20-28-9 if the employee receives a total salary in one school term that exceeds the total salary the employee received in the previous school term, regardless of the type of pay scale used to calculate the employee's salary.

### Charter Schools (HEA 1002)

79. How does teacher due process apply to teachers employed by charter schools?

**Teachers at charter schools are essentially at-will employees.**

80. Does charter school legislation address students who return to a traditional public school after ADM?

**Nothing has changed regarding this issue.**

81. Can charter schools dismiss a student without granting due process?

**No.**

82. How is funding calculated when a charter school student returns to a traditional public school after ADM count?

**The same way it would be calculated for any student.**

### Vouchers (HEA 1003)

83. What responsibility does a public school have for special education students placed in non- public schools and is this provision retroactive?

**HEA 1341 requires that the state special education dollars generated by special-needs students attending non-public schools is spent on services for this group of non-public special education students. This provision is effective July 1, 2011.**

### Full Day Kindergarten

84. How will the additional dollars for education affect full day kindergarten?

**There are two methods of funding for full-day kindergarten. First, schools will continue to receive one-half of the per student funding for each kindergarten student. It is important to recognize, however, that Indiana does not require schools to offer FDK programs or require parents to choose FDK for their children.**

\* Denotes answers that have been revised since the last version



Second, as part of HEA1376-2012, and in addition to the one-half of the per student funding for each kindergarten student, schools that apply will also receive \$2,400 per student through the full-day kindergarten grant. The per student grant amount will help cover the cost of FDK versus half-day kindergarten. Schools participating in and receiving FDK grant money may not charge a fee for enrolling in or attending full-day kindergarten.

There will likely be two effects from this change to the FDK grant:

1. Schools that do not currently offer FDK programs may implement one, because of the financial boost resulting from the increase in the grant funding level per student.
2. All schools that currently receive money through FDK grants will receive more using the flat amount provided for in HEA1376.

### Reductions in Force

85. What laws govern reductions in force (RIFs) that occur prior to and during the 2011-2012 school year? Should seniority, performance, or some other consideration form the basis for RIFs during this period?

**Corporations with collective bargaining agreements (CBAs) executed prior to July 1, 2011, should look to the provisions of that agreement, which control RIF processes and decisions until that contract expires.**

**If a CBA expires after July 1, 2011, the next CBA agreed to by the parties may not contain language regarding RIFs. This is due to the restrictions in IC 20-29-6-4 and 5, which limit the terms of a CBA to wages, salaries, and wage-related fringe benefits. Moreover, section 4.5 states that corporations may not bargain collectively regarding “[t]eacher dismissal procedures and criteria.” IC 20-29-6-4.5(a)(2).**

**The provision in SEA 1 that requires school corporations to consider performance over seniority when selecting teachers for a RIF does not take effect until July 1, 2012. Therefore, if school corporations are currently bargaining for a new contract for the 2011-2012 school year, neither the new CBA nor the law requiring the corporation to consider performance over seniority will govern RIFs that occur before July 1, 2012.**

**School corporations with unsettled contracts or contracts that settled after July 1, 2011, are free to develop their own standards for RIFs through either school board or administrative policies. As always, school corporations should work closely with their own legal counsel when developing such policies. Also, please note that IC 20-29-6-7(4) requires discussion of “[h]iring, evaluation, promotion, demotion, transfer, assignment, and retention of certificated employees,” so school corporations should discuss changes**

\* Denotes answers that have been revised since the last version

to established RIF policies and procedures with the exclusive representative prior to implementing them.

School corporations with post-July 1, 2011, contracts are free to comply with SEA 1's mandate that RIFs be conducted on the basis of "performance rather than seniority" now even though it does not take legal effect until July 1, 2012. If corporations choose to consider performance or other factors in their decisions, they should consult with their attorneys as soon as possible about developing clear and non-discriminatory policies for implementation during the 2011-2012 school term.

**For more information on these topics, please visit**

**<http://doe.in.gov/improvement/legal/collective-bargaining>**

**<http://www.doe.in.gov/improvement/educator-effectiveness/compensation-systems>**

**<http://www.doe.in.gov/improvement/educator-effectiveness/evaluations>**